



Auditors concern with a potential conflict with Section 12-6-3 (A) by clarifying that the public housing authority audit “shall be included in” the local primary government entity audit.

### Synopsis of Original Bill

#### Providing for Independent Audits by Public Housing Authorities

Senate Bill 263 amends the Audit Act (Section 12-6-1 to 12-6-14, NMSA 1978):

- to allow housing authorities (other than regional housing authorities), at their discretion, to be audited separately from their local primary government;
- so that if a separate audit is made, the housing authority audit “need not be integrated into the local primary government entity audit;”
- so that the public housing authority audit “need not be conducted by the same auditor who audits the financial affairs of the local primary government;” and
- so that the housing authority “shall not bear the cost of an audit conducted solely at the request of its local primary government.”

#### **SIGNIFICANT ISSUES**

The Office of the Attorney General reports that new § 12-6-3(D) is proposed “[i]n order to comply with United States Department of Housing and Urban Development requirements....” It grants a public housing authority (excepting a regional housing authority) the discretion to order an audit that is separate from the audit conducted by the public housing authority’s “local primary government entity” (e.g., city or county), allowing it to employ a separate auditor (approved by the State Auditor pursuant to § 12-6-3(A)) from the one employed by the local primary government entity. Further, the audit need not be integrated into the audit done for that local primary government entity.

According to the Attorney General, the purpose of new § 12-6-3(D) is to amend New Mexico’s audit law to comply with Federal regulations governing the state’s public housing authorities (“PHA”), which receive Federal funding, and to grant them the mandated discretion to determine whether to contract separately for the required annual audit, or to have the PHA audit included in the audit completed for the local primary government entity. The Attorney General further notes that it is unclear whether failure to amend our Audit Act to come into line with the Federal public housing authority regulations will jeopardize Federal funding, but that may be one potential consequence.

New § 12-6-4(A) addresses the circumstance in which the local primary government entity, on its own and without the concurrence of the PHA, orders an audit of the PHA. By implication, the local primary government entity will have to pay. Thus, it is clear by implication that the local primary government entity can decide independently to have the PHA audited, even if the PHA orders its own separate audit with a separate auditor, as per § 12-6-3(D), but it will have to pay for that audit from its own funds.

The Office of the State Auditor reports that it offers public housing authorities an exemption from the Audit Rule requirement (2.2.2.10.A(1)(c) of NMAC) so they can use a different audit firm than the local government’s audit firm. The local government has to request the exemption. In order to avoid “double auditing” the housing authority in this situation, the local government’s audit firm must agree to rely upon the work of the housing authority’s audit firm, per auditing

standards. Therefore, some coordination and communication is required; that is the reason the Office requires an exemption request from the local government. The Office issues an official “exemption letter” to the local government for the housing authority to use a different auditor, and then provides copies to all the affected parties, the housing authority and the local government’s audit firm.

Currently, housing authorities without an exemption to use a different auditor from the local government’s audit firm, have the same audit contract as their local government. If SB 263 were to pass, the Office of the State Auditor would have to issue separate audit contracts for all the housing authorities.

Further, the State Auditor notes, SB 263 conflicts with the Audit Act as written and with generally accepted accounting principles. Section 12-6-3 (A), NMSA 1978, states that “the audits shall be conducted in accordance with generally accepted auditing standards and rules issued by the State Auditor.” SB 263 conflicts with Section 12-6-3(A) in stating that “the public housing authority audit need not be integrated into the local primary government entity audit.” Generally accepted auditing standards require in GASBS 14 paragraph 64, that financial statements that do not include the financial data of a component unit should acknowledge that the financial statements do not include the data of the component units necessary for reporting in conformity with generally accepted accounting principles. Generally accepted auditing standards state in SAS AU 508.35 that “When financial statements are materially affected by a departure from generally accepted accounting principles and the auditor has audited the statements in accordance with generally accepted auditing standards, he or she should express a qualified or an adverse opinion.

In other words, legislating that the housing authority financial data can be omitted from the financial statements of their related counties or municipalities would result in qualified (or adverse) opinions on the audited financial statements of those local governments whose housing authorities are omitted.

The New Mexico Municipal League noted that, in supporting SB 263, it believes the bill addresses the issue of giving public housing authorities the option of obtaining an independent audit to be in compliance with US Dept. of Housing and Urban Development (HUD) requirements for public housing authorities. NMML believe the bill further excludes the regional housing authorities.

The League reports that the Bernalillo County Housing Authority adds that due to the lack of auditors with housing authority expertise in NM, it is very difficult to comply with the deadlines and complexities of such audits. Without an audit, authorities cannot solicit additional funding, specifically from the federal government.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 263 is a duplicate of HB 237.

### **TECHNICAL ISSUES**

The Attorney General notes that, if the phrase "regional housing authority" refers to regional housing authorities created by the Regional Housing Law, § 11-3A-1 *et seq.*, it is suggested that

that reference be added for the sake of clarity and specificity. Definitions of "public housing authority" and "local primary government entity" may also add to clarity.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The PHA's of New Mexico may be out of compliance with HUD regulations. As stated in Significant Issues, it is unknown whether PHA funding may be jeopardized by such noncompliance, but that may a concern.

### **QUESTIONS**

1. How does the current exemption process offered by the State Auditor not address the underlying concerns SB 263 attempts to address?
2. Does Senate Bill 263 intend to include “regional housing authority” within the scope of the bill, as well as “public housing authorities?”
3. Is federal PHA funding jeopardized if SB 263 is not enacted?
4. What is the impact of the apparent conflict with GASB rules as noted by the State Auditor?
5. What is the administrative impact on the State Auditor of having to issue separate contracts for all housing authorities?
6. How does legislating that an authorities data need not be included in the financial data of the related entity, and thus resulting in a qualified or adverse opinion, differ from the situation where the State Auditor authorizes an exemption?

WEP/csd